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No. 85-1997

IN THE

Supreme Court of the United States

OCTOBER TERM 1986

LOCAL 134, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO

Petitioner,

v.

HARVSTONE MANUFACTURING CORP., DURAY FLUORESCENT MANUFACTURING CO., AMERICAN FLUORESCENT CORP. and HOUSE-O-LITE CORP.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF OF RESPONDENTS HARVSTONE MANUFACTURING CORP., DURAY FLUORESCENT MANUFACTURING CO., AMERICAN FLUORESCENT CORP. and HOUSE-O-LITE CORP. IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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COUNTERSTATEMENT OF QUESTION PRESENTED FOR REVIEW

Whether the fact-specific resolution and application of well-established federal law by the Seventh Circuit Court of Appeals is appropriate for Writ of Certiorari.

STATEMENT REQUIRED BY RULE 28.1

Duray Fluorescent Manufacturing Co. is affiliated with Esco International, Inc. American Fluorescent Corp. is affiliated by means of common ownership with AFCO-Lite Corp. And House-0-Lite Corp. is affiliated by means of common ownership with Haggerty Enterprises, Inc. and Creators Lamp Corp.

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Respondents, HARVSTONE MANUFACTURING CORP., DURAY FLUORESCENT MANUFACTURING CO., AMERICAN FLUORESCENT CORP. and HOUSE-O-LITE CORP., oppose the Petition for a Writ of Certiorari[1]

[1] The Petition was filed by the Union only. It is significant that the National Labor Relations Board, the federal agency charged with the responsibility of enforcing the National Labor Relations Act, has not petitioned this Court for a Writ of Certiorari.

because the decision below is fact-specific and presents no special and important reason for Supreme Court review, and because the decision below does not conflict with decisions of this Court or with other courts of appeals.

COUNTERSTATEMENT OF THE CASE

Respondents Harvstone Manufacturing Corp., Duray Fluorescent Manufacturing Co., American Fluorescent Corp., and House-O-Lite Corp. (hereinafter referred to as "Respondents" or "employers") were engaged in collective bargaining with the Petitioner Union, but no agreement was reached.

During bargaining, the employers resisted certain Union-proposed increases in wages and benefits. The employers instead sought relief, pointing out that their competition in the fluorescent light fixture business enjoyed lower wage and benefit costs. The bargaining failed to produce any agreements. Following the expiration of the collective bargaining agreements, the Respondents implemented several unilateral changes in their employees' terms and conditions of employment.

Subsequently, the Union filed unfair labor practice charges under the National Labor Relations Act alleging essentially (1) that the employers had pleaded an "inability to pay" and, therefore, their refusal to disclose financial records constituted a refusal to bargain; and (2) that a wage increase was due the employees under a cost-of-living clause ("COLA") in the expired collective bargaining agreements. The Administrative Law Judge held that the Respondents' obligation under the COLA clause to pay the employees had accrued. Therefore, the Respondents' had improperly insisted on bargaining to impasse on the subject and had unlawfully instituted unilateral changes as a result. (P.App. 40a-46a). The Administrative Law Judge also held that the Respondents' failure to disclose financial data was an unfair labor practice under 29 U.S.C. § 158(a)(5)and (1) (P.App. 5a-6a, 50a).

The National Labor Relations Board affirmed the decision of the Administrative Law Judge but based its decision solely on the finding that the Respondents failed to bargain in good faith by refusing to disclose financial data after pleading an inability to pay. (P.App. 5a, 28a-29a). *Harvstone Manufacturing Corp.*, 272 N.L.R.B. 939 (1984). The Court of Appeals reversed the Board, denying enforcement of the essential portions of its order. The Seventh Circuit found that Respondents Harvstone, American Fluorescent and House-O-Lite had never claimed an inability to pay, but instead, were simply unwilling to meet the Union's demands (P.App. 12a, 20a). In addition, the court further found that all four Respondents had been under no obligation to pay an adjustment in accordance with the COLA clauses contained in expired collective bargaining agreements (P.App. 19a, 20a). *NLRB v. Harvstone Manufacturing Corp.*, 785 F.2d 570 (7th Cir. 1986).

ARGUMENT—REASON WHY THE WRIT SHOULD BE DENIED

The Writ Should Be Denied Because The Decision Below Is Fully Consistent With The Decisions Of This Court And Presents No Conflict With Decisions Of Other Circuit Courts of Appeals.

Cost-Of-Living Clause

This portion of the case involved the interpretation of a cost-of-living clause ("COLA") in the parties' collective bargaining agreements. The points of reference for the COLA calculations were during the life of the agreement. But the effective date on which the obligation to pay the final adjustments arose, occurred *after* the contract expired (P.App. 16a-19a).

The Union asserted that the employees were nevertheless entitled to the COLA increase, but the Respondents disagreed, reasoning that since the contract called for an increase *after* the contract had expired, the Respondents were under no contractual obligation to pay the adjustment. The Seventh Circuit agreed with the Respondents, and found that they had not been obligated to pay the COLA adjustment (P.App. 19a, 20a).

As the court of appeals stated, the "debate centers around whether the Respondents were obligated to make an adjustment effective September 1, 1982, even though the agreements between the parties expired on August 31, 1982." (P.App. 17a). As the court of appeals correctly decided, this cost-of-living issue "involves nothing more than a debate over contractual interpretation." (P.App. 17a).

Labor arbitrators, or in certain cases the National Labor Relations Board, are frequently called upon to interpret detailed clauses in labor contracts. But this fact-specific, and

routine task clearly fails to supply the "special and important reasons" necessary to warrant review by the United States Supreme Court.

Moreover, the Seventh Circuit's decision is not in conflict with decisions of this Court or with the decisions of the other circuits. Petitioner's assertion that a conflict exists is completely unfounded. *Meilman Food Industries, Inc.*, 234 N.L.R.B. 698, *enforced without opinion*, 593 F.2d 1371 (D.C. Cir. 1979), upon which Petitioner relies for its assertion, does not conflict with the Seventh Circuit's decision. The District of Columbia Circuit there affirmed, without opinion, the Board's fact—specific resolution of a contract clause which "require[d] no construction or interpretation beyond its plain meaning." Clearly, nothing more was required than interpreting a contract provision. Similarly, the Seventh Circuit in this case simply interpreted the parties' agreements. Thus, plainly, there is no conflict in reasoning or in the application of legal precedent between *Meilman Food Industries, Inc.* 234 N.L.R.B. 698, *enforced without opinion*, 593 F.2d 1371 and the Seventh Circuit's decision. Rather, the cases merely reflect different interpretations of different contractual provisions. Interpreting a specific labor contract clause falls far short of the threshold showing required by the Supreme Court to grant review.

Refusal to Supply Data.

An employer who asserts during negotiations that it is unable to meet a union's financial demands must provide substantiating data. *NLRB v. Truitt Manufacturing Co.*, 351 U.S. 149, 153 (1956). This is not the case, however, where an employer is simply unwilling to grant a raise. This distinction has long been recognized and remains valid. *See Empire Terminal Warehouse Co.*, 151 N.L.R.B. 1359, 1360 (1965), *enforced sub nom., Dallas General Drivers, Local No. 745 v. NLRB*, 355 F.2d 842 (D.C. Cir. 1966); *United Fire Proof Warehouse Co. v. NLRB*, 356 F.2d 494 (7th Cir. 1966); *Charles*

E. Honaker, 147 N.L.R.B. 1184, 1187-88 (1964). *See also New York Printing Pressmen v. NLRB*, 538 F.2d 496, 500 (2d Cir. 1976). In *Dallas General*, 355 F.2d at 845, the Board refused to order the company to reveal its financial data. The court affirmed this decision, reasoning that the company's refusal "was not based on a claim of financial inability but on the ground that it was paying rates in excess of prevailing rates of competition in the same labor market." Using similar reasoning, the Seventh Circuit correctly found that the employers here merely refused to grant a raise; this was "not a plea of inability to pay" (P.App. 11a). Rather, as the court observed, "the record indicates that the Respondents were simply unwilling to meet the Union's demands" (P.App. 12a).

To say there is a conflict between this Court's precedent and the Seventh Circuit's decision is inaccurate. The decision below turned simply on the application of the facts to well-settled principles. The determination was not what standard to apply, but was simply whether the facts met the well-established "inability to pay" standard. *NLRB v. Truitt Manufacturing Co.*, 351 U.S. 149. Each "bargaining" case is different, and while it may be suited to a determination by the National Labor Relations Board, or by a federal appellate court, this is not so with the United States Supreme Court. Cases involving only another examination of the facts, which have already undergone several layers of review, are inappropriate for a Writ of Certiorari. *See, e.g., Wilkerson v. McCarthy*, 336 U.S. 53, 66 (Frankfurter, J., concurring).

The Seventh Circuit Court of Appeals did not decide an important issue of federal law which has not been decided by this Court, nor does its decision conflict with applicable decisions of this Court or other courts of appeals. Petitioner simply disagrees with the Seventh Circuit's application of settled federal law and its interpretation of the collective bargaining agreements.

CONCLUSION

For the reasons stated, the Petition should be denied. The decision below is consistent with decisions of this Court and the other courts of appeals concerning collective bargaining, labor contracts and the obligation to bargain in good faith.

Respectfully submitted,

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